IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6811 OF 2004

Ranojirao Shikshan Sanstha, Mhasave .. Petitioner

V/s

The State of Maharashtra & Ors. .. Respondents

Mr.M.S. Topkar for the Petitioner.

Mr.R.D. Rane, Additional Government Pleader, for the Respondents.

CORAM : H.L. GOKHALE &
S.P. KUKDAY, JJ.

DATE : 10TH JUNE 2005

**ORAL ORDER** : (Per Gokhale, J.)

1. Rule. Rule is made returnable forthwith.

2. Heard both the learned counsel.

3. Affidavit in reply has been filed by the Superintendent, Education Department (Primary), Zilla Parishad, Kolhapur affirmed on 29th September 2004. Rejoinder also has been filed. On an earlier date, i.e. on 27th August 2004, the parties were put to notice that the petition will be disposed of at the admission stage itself.

4. The Petitioner is a society registered under the

Societies Registration Act and is running a High School as also a Primary School at Village Mhasave, Taluka Bhudargad, District Kolhapur. The petition is filed to challenge the legality and validity of setting up of 5th to 7th standards by another Primary School of the Zilla Parishad in the same village. The case of the Petitioner institution is that it is running the school from the year 1968. The school is recognised by the Education Department and receives 100% grant. It is situated in a village, of which the population is just around 3200 and the addition of these classes to the Zilla Parishad Primary School will affect it adversely.

5. The Respondent No.3 - Zilla Parishad has decided to add these classes to its primary school in this village. In para 11 and 12 of the petition, political ill-will to the management of the Petitioner Society and malafides of the Sarpanch are alleged. The allegations are denied in the reply of the Zilla Parishad. However, without going into these allegations, it has to be noted that when the permission was granted to the Petitioner school to start 5th standard in the year 1972-73, the Deputy Director of Education had clearly laid down in clause 5 of the grant that the new class should have minimum average daily attendance of 30 students and that in no case the condition of minimum average daily

attendance will be relaxed. It is submitted that addition of these classes to the Zilla Parishad School is going to adversely affect the intake in the 5th standard and the number will go down to less than 30. In fact, when this school of the Zilla Parishad started the 5th standard in the year 2004-05, the number of students went down from 51 to 35 and now in the year 2005-06, the number has gone down to 22. Mr.Topkar, learned counsel for the Petitioner, has tendered a chart signed by the Head Master of the school to that effect.

6. Mr.Topkar thereafter relied upon a Government Resolution dated 10th August 1977 where in clause 3 it has been laid down that the secondary schools will be permitted to have 5th to 7th standards from 1977-78 onwards and wherever such schools are permitted to have these standards, the Zilla Parishads or the Nagar Parishads will close down these divisions from their primary schools, exception of course being where the strength of the students is quite large. Mr.Topkar points out that there is no complaint whatsoever that any student was not admitted in Petitioner School and nothing of the kind has been averred in the reply and in fact there is no complaint to such an effect. He draws support from the letter sent by the Deputy Director of Education, Kolhapur dated 5th July 2004 where the Deputy

Director had clearly written to the Zilla Parishad that this school has been running from 1968, it has been receiving grant and it has been running the classes 5th to 7th standards from 1972 onwards. It has further been stated that if the Zilla Parishad starts 5th to 7th standards in the same village, it will have an adverse effect on the school run by the Petitioner and the teachers will become surplus. The Deputy Director has therefore in clear terms stated that the Zilla Parishad should not start 5th to 7th standards in its school. Mr.Topkar, therefore, submits that on the basis of the viability of the school, its past performance, its continuous running all these years, service to the society, the government policy, the decision of the Deputy Director of Education, and more than that on the facts of the case, it is just and necessary that the Zilla Parishad should be restrained from opening 5th to 7th standards and the classes should be directed to be closed down. He stated that the Petitioner school is undoubtedly ready and willing to absorb all such students of 5th to 7th standards when the Zilla Parishad closes down these classes.

7. Mr.Rane, Additional Government Pleader appearing for the Respondents, submitted that 5th to 7th standards are being attached to the primary school of the Zilla

Parishad and it is not bound by the fiat of the Deputy Director of Education. In fact, that is what is stated in para 3 of the affidavit in reply. It is stated in this para that the criterion to give permission to run 5th standard is that there should be minimum 15 to 20 students and the number of students in the 5th standard started by the Zilla Parishad were 25. It is further stated that it is not a private school to be governed by the MEPS Act. On a rejoinder being filed by the Petitioner institution, a sur-rejoinder is filed and therein it is stated that the students from the adjoining villages, namely Morewadi, Bhatewadi and Mahalwadi, are coming to take education in the school in Mhasave and therefore the Petitioner school's intake should not be affected.

8. Mr.Rane has drawn our attention to the G.R. dated 1st March 1999 which states in clause 3 that while opening 5th standard, it is necessary to have 25 students in 4th standard which is what the Zilla Parishad school is having. That apart, he relied upon the two unreported orders passed by the two Division Benches in two writ petitions. First one is in Writ Petition No.4172 of 2001 in the case of Shriram Kreeda & Shikshan Prasarak Mandal v. Secretary, Government of Maharashtra, Education Department decided on 23rd

October 2001 (B.P. Singh, C.J. and Dr.D.Y. Chandrachud J.). The question involved in that petition was as to whether opening of school can be prohibited merely on the basis of its distance from an existing school. That is what is stated in para 2 of the order passed by the Division Bench. This para further records that there should not be unhealthy competition amongst the schools and that if the existing school is not adequate for the large number of students, another school can certainly be permitted. Thereafter it is stated that in fact in the field of education, a healthy competition may even be desirable. Mr.Rane emphasise this proposition. He also relies upon another Division Bench judgment in Writ Petition No.3666 of 1999 in the case of Adarsha Shikshan Prasarak Mandal v. The Education Officer (Secondary), Zilla Parishad, Solapur decided on 18th March 2004 (F.I. Rebello & S.R. Sathe, JJ.). Here also the question was with respect to opening of school within a particular distance. In this matter also, the court found that distance should not be the only criteria to deny permission for opening of a new school.

9. We have heard the counsel for both the parties. The distance of a new school from the existing school is not a question in the present matter. The question

raised in the petition is with respect to an adverse effect of the opening of new classes in another school on the existing school. Reliance is placed on the condition imposed on the Petitioner school while opening 5th standard class that the strength must at all material time must not go down less than 30. This direction given by the Deputy Director of Education binds the Petitioner school. The Zilla Parishad is not expected to take steps to bring down the strength of an existing good school. It is also pointed out that in fact the number of students has gone down in the year 2004-05 and has further gone down in the year 2005-06. That was bound to be so when additional classes in another school are opened. We asked Mr.Rane for the Zilla Parishad as to whether there was any grievance that the Petitioner School could not accommodate the number of students which were expected to join in case the Zilla Parishad was not permitted to have 5th to 7th standards. There is no such grievance and the students can certainly be accommodated in the Petitioner school. The anxiety of the Petitioner school is also recognised by the Deputy Director of Education in a very recent communication dated 5th July 2004 which was addressed to the Zilla Parishad. Mr.Rane is right in saying that the Zilla Parishad school may not be equated with a private school. However, the Zilla Parishad must always bear in

mind that where an educational society is already running a school properly without any complaint or grievance, they must encourage such school and not create difficulties by opening parallel classes in another school whereby the strength of the students in the existing school will go down. This is what has happened in the present case in spite of the letter written by the Deputy Director of Education to the Zilla Parishad. It is also material to note that in the G.R. dated 10th August 1977, the Government has recognised that where the secondary schools were permitted to open 5th to 7th standards, the Zilla Parishad or Nagar Parishads were expected to close down such classes from their schools. Here what has happened is exactly contrary thereto. The case of the Petitioner is therefore fully justified on the facts as well as the decisions of the State Government recorded in G.R. and the communications from the Deputy Director of Education from time to time.

10. In the circumstances, we have no hesitation in accepting that opening of the classes of 5th to 7th standards by Zilla Parishad will lead to an unnecessary impact on the existing school and its health will undoubtedly will get affected. It is therefore just and necessary that the direction as sought ought to be

given, namely that the Zilla Parishad should be directed to close down the 5th standard which it had started in the year 2004-05 with further direction not to start 6th standard this year. We direct the Zilla Parishad to close down the division of 5th standard and further direct not to open 6th or 7th standard thereafter. We may however add that in the event the Petitioner school reaches any optimum figure beyond which it is not expected to have admissions, in that case the Zilla Parishad may consider opening of these classes in its school. However, this figure will have to be decided as per the government policy as to how many students have to be accommodated on a higher side in a class.

11. Rule is made absolute as above though there will not be any order as to costs.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)